

**Memorandum of Understanding between ARTIS Senior Living, LLC
 (“Applicant”) and the Town of Lexington, Massachusetts (“Town”)**

June 16, 2014

The Applicant has filed a Preliminary Site Development and Use Plan (“PSDUP”) for a rezoning of land entitled “Preliminary Site Development and Use Plan for the Planned Commercial District at 430 Concord Avenue, Lexington, Massachusetts” on April 24, 2014, revised as of June 9, 2014, which has been placed on the warrant for the Special Town Meeting on June 16, 2014 as Article 2. The land with the existing buildings thereon is Assessor’s Map 10, Parcel 8 located at 430 Concord Avenue, Lexington, Massachusetts (the “Property”).

In the PSDUP, the Applicant proposes certain commitments and actions. The purpose of this Memorandum of Understanding (“MOU”) is for the Applicant and the Town to reach agreement on those provisions having public benefit to the Town as well as benefit to the Property. The Applicant agrees that, in consideration for the support of the Board of Selectmen for the PSDUP, the sufficiency of which is hereby acknowledged, the Applicant shall be bound by this MOU, the terms of which shall be incorporated by the Zoning Board of Appeals into the Special Permit for the Definitive Site Development and Use Plan (“SP-DSDUP”).

1. Concord Avenue Widening/Access. The Applicant, at its own cost, will widen the paved surface of Concord Avenue to enable fire-fighting apparatus to turn into the driveway from westbound Concord Avenue without leaving the pavement. The widening will be to Town of Lexington standards. The width will be up to five feet, as determined by the Lexington Fire Department and Public Works, in consultation with the abutters, north of the existing edge of pavement. The length will be 120 feet, more or less, from a point across from the proposed driveway for 430 Concord Ave eastward 120 feet toward Waltham Street. Plans for such widening shall be presented to the Engineering Department for approval prior to commencement of such widening.
2. Concord Avenue Sight Lines. Applicant will work with the abutter at 426 Concord Avenue to keep sight lines of Concord Avenue free of obstruction for vehicles accessing or egressing 430 Concord Avenue or 426 Concord Avenue.
3. Abutters Screening. Applicant will continue to work with abutters at 426 and 440 Concord Avenue, and 5 and 7 Hampton Road to provide screening of these properties from the proposed building. Applicant is making separate agreements with these property owners, particular to the circumstances of their respective residences, which will be binding on the Applicant and enforceable by said abutters. Evidence of the conclusion of such written agreements with these abutters will be submitted with the application to the Zoning Board of Appeals for the SP-DSDUP. Applicant will cover costs, not to exceed a total of \$80,000, to be used by either the Applicant or the abutters, as they shall agree, to install the

agreed-upon screening. If any such abutter has declined to enter into an agreement with the Applicant, after good faith negotiations, the Applicant shall present to the Zoning Board of Appeals evidence of its attempts to reasonably accommodate such abutter's requests for screening and the reasons that an agreement could not be reached.

4. Noise Control. Applicant acknowledges that in its compliance with the Town's General Noise By-Law, the noise control standard contained in the By-Law may not be appropriate for this specific proposal, and agrees that between the hours of 10:00 p.m. and 6:00 a.m., normal operations of stationary building equipment in and immediately outside the Applicant's assisted living facility, including heating, ventilation and air conditioning equipment at its full load operation, will not exceed a noise level of 5dBA above established ambient noise levels at the boundaries of lots with residential dwellings.

The Applicant will submit a design report as part of the SP-DSDUP submission, by an acoustical engineer, showing how Applicant will achieve such a standard. Prior to occupancy, the ambient noise level will be established by a series of measurements taken at one hour increments over a seven-day period and there may be more than one level established. The Applicant and its engineer will also submit a testing protocol to be used to confirm compliance with the standard. The testing protocol shall include measurements taken at the property line at or immediately above the elevation of any equipment installed on the roof of the facility. The protocol will specify what type of measurement instruments will be used, where the instruments will be placed and when the measurements will be taken. The Town will hire, at Applicant's expense, a noise consultant to review the testing protocol, and, at a later date, to review Applicant's data showing compliance with the noise standard.

In addition, in lieu of the limitation of hours for commercial deliveries in Section 80-4.C of the Town's General Noise By-Law, Applicant shall prohibit such deliveries from 10:00 p.m. to 7:00 a.m. on weekdays and from 10:00 p.m. to 8:00 a.m. on Saturdays, Sundays and state holidays. In lieu of limitations of hours on use of domestic mechanical equipment in Section 80-4.H, Applicant shall prohibit the use of such equipment from 8:00 p.m. to 7:00 a.m. on weekdays and from 8:00 p.m. to 8:00 a.m. on Saturdays, Sundays and state holidays. All other noise sources emanating from or used on the Property shall comply with applicable provisions of the Town's General Noise By-Law.

5. Transit Passes. The Applicant shall purchase \$1,000 each year of transit passes for use with LEXPRESS, the MBTA and/or other mass transit system by employees for a period of three years, to begin upon issuance of a Certificate of Occupancy to Applicant. If such transit passes have not been fully used by employees after the first year, Applicant shall have the right to present evidence to the Board of Selectmen that notwithstanding its good faith and due diligence in publicizing to employees the availability of such passes, a substantial number of the passes required to be purchased remain unused, in which case the Board of

Selectmen may reduce the dollar amount of said purchase, per year, except that the Applicant will be obligated for future years to provide such passes that are requested by employees until a total maximum expenditure of \$ 3,000 is reached.

6. Ambulance Service. Applicant's resident care facility will provide a nurse on each shift which exceeds State of Massachusetts requirements and reduces 911-related ambulance calls. Applicant will also work with local ambulance services to manage the use of sirens and lights for emergency and non-emergency calls.
7. Delivery Truck Sizes. Applicant will prohibit 18-wheel tractor trailers from making deliveries.
8. Emergency Planning and Coordination with Lexington Fire and Police Departments. Applicant will prepare a detailed emergency response plan that meets and, in many instances, exceeds State of Massachusetts requirements. The plan will cover protocols for dealing with a variety of emergencies including fire, and procedures in the event a resident leaves the residence without family permission and accompaniment. The Plan shall include identified evacuation routes, meeting locations and resources necessary to perform a complete evacuation of the building, detailing number of personnel to be evacuated, number of ambulances needed for evacuation, and other details as may be requested by the Fire Department. The plan will be filed with and approved by the Lexington Fire Department, prior to the issuance of a Certificate of Occupancy.
9. Employee Parking. Applicant will restrict employee parking to better facilitate emergency access, by limiting employee parking near the building entrance to a sufficient degree that emergency response vehicles may temporarily park as close as possible to the entrance. A parking plan that designates parking spaces in which employee parking is prohibited shall be filed with and approved by the Lexington Fire Department and, as so approved, shall be submitted with the application to the Zoning Board of Appeals to be incorporated into the SP-DSDUP.
10. Property History. Applicant will provide space in the residence facility for a display of artifacts and photographs depicting the history of the site including the former dairy operations on the Property.
11. Easements. The Applicant shall grant at no cost certain easements as follow to the Town and covenants not to sue or otherwise contest any exercise of eminent domain by the Town to acquire such easements.

Before construction of the improvements to the Property, the Applicant shall grant a temporary easement to the Town along a way suitable for use by a 60,000 lb GVWR truck with dual rear axles to properly access and egress the Town's existing sewer easement along the southerly Property line. Said temporary easement shall expire after completion of the Property improvements and

construction of a 12 foot wide service road shown on the site utility plan, sheet 3 of 6, by Meridian Associates dated June 4, 2014 (or the most recent site utility plan approved by the Planning Board and Conservation Commission).

The Applicant shall grant a permanent easement to the Town corresponding to the 12 foot wide service road from its entrance off of Concord Avenue to the existing sewer easement held by the Town, in accordance with the site utility plan, sheet 3 of 6, by Meridian Associates dated June 4, 2014 (or the most recent site utility plan approved by the Planning Board and Conservation Commission). The Applicant shall grant an additional five foot wide easement along the portion of the existing sewer easement running along the west Property line, expanding the width of said existing sewer easement from 20 feet to 25 feet, as shown in red highlighting on the attached plan.

In addition to and notwithstanding the limitations in note 11 of the Site Construction Plan, the Applicant agrees to expand the purposes for which the Town may use the existing sewer easement held by the Town along the westerly and southerly Property lines to include its use as access to a parcel of land on the other side of the south Property line for conservation purposes, as customary for pedestrian access and for vehicles used only for conservation land maintenance.

12. Lexington Preference. To the extent permitted by law, all Lexington residents will be entitled to a “Lexington Preference” category of admission and in the event the facility is fully occupied and a waiting list exists. This preference status will also apply to individuals who are not residents of Lexington but who are the responsibility of a care giver who is a Lexington resident. Applicant will actively recruit in Lexington for all open staff positions, including advertising jobs in local Lexington publications.
13. “Living Unit” defined. The Applicant agrees that when the term “living unit” is used in the PSDUP, it is intended to mean a living space with only one bed for one person, which definition shall be included in the DSDUP.
14. Lighting. In advance of the hearing before the Zoning Board of Appeals for the Applicant’s SP-DSDUP, Applicant shall submit a comprehensive lighting plan, consistent with provisions of the PSDUP, to the Planning Board for its review and comments, which will be submitted to the Zoning Board of Appeals. The Applicant will include in the DSDUP section on Illumination, language that incorporates the following standards: a) all outdoor lighting will be shielded to create a lighting level of zero foot-candles at the Property lines; and b) lighting fixtures shall be located no higher than 14 feet from ground (maximum elevation of 226.06).
15. Applicant shall establish a fund of \$150,000 dedicated to providing financial assistance to residents at the Applicant’s facility who have exhausted their financial resources in order that they may continue to reside in the Applicant’s

facility, to be administered by the Trustees of Public Trusts, subject to rules and procedures developed in consultation with and approved by the Applicant. Said fund shall be established pursuant to the following schedule of payments: \$50,000 funded upon the issuance of the Certificate of Occupancy, \$50,000 on the third anniversary of the date of the Certificate of Occupancy, and the remaining \$50,000 on the fifth anniversary of the date of the Certificate of Occupancy.

Binding Effect. This Agreement shall be binding on the Applicant and its successors and assigns and on the Town. This Agreement is for the benefit of the Applicant and the Town, and it may be enforced by any remedy provided at law or in equity. This Agreement and the Lexington Zoning Bylaw shall be construed in such a way as to harmonize any conflicting provisions to the greatest extent reasonably possible, but in the event of any irreconcilable conflict between this Agreement and any provision in the Bylaw, the provisions of the Bylaw shall control (subject always to the provisions of General Laws, Chapter 40A, as amended).

Applicant's Existence and Authority. The Applicant is a Delaware limited liability company with principal place of business at 1651 Old Meadow Road- Suite100, McLean, Virginia 22102, duly formed, validly existing, and authorized to do business in Massachusetts.

This Agreement constitutes a valid and legally binding obligation of the Applicant, enforceable against the Applicant in accordance with its terms, and neither the execution, delivery or performance of this Agreement nor compliance herewith conflicts with or will conflict with or results or will result in a breach of or constitutes or will constitute a default under (i) the organizational documents of the Applicant, (ii) any law or any order, writ, injunction or decree of any court of governmental authority, or (iii) any agreement or instrument to which the Applicant is a party by which it is bound.

Dispute and Default. In the event of any dispute or default hereunder, the losing or defaulting party shall reimburse the prevailing party for its costs and expenses, including without limitation court costs and attorney's fees.

Cooperation. The Applicant hereby agrees to continue to work cooperatively with the Town on an ongoing basis to implement both the specific provisions and the intent and purposes of this Agreement.

Time is of the Essence. Time shall be of the essence of this Agreement.

Permitting. The execution and delivery of this Agreement does not constitute an agreement by the Town that any necessary permit or approval for the Project will in fact be granted. Any provision of this Agreement may be incorporated into, and made a condition of, any permit or approval granted by the Town.

Amendment of Agreement. This Agreement may not be amended, modified or terminated except by a written instrument executed by the Applicant and by a majority of the Board

of Selectmen.

Enforcement; No Waiver. The failure of the Town to enforce this Agreement shall not be deemed a waiver of the Town's right to do so thereafter. If any provision of this Agreement or its applicability to any person or circumstances shall be held invalid, the remainder thereof, or the application to other persons shall not be affected.

Severability. The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

Applicable Law. This Agreement shall be governed by and according to the laws of the Commonwealth of Massachusetts, as amended from time to time. Any action brought by the Town hereunder may be brought in the Superior Court in and for the County of Middlesex, and the Applicant hereby agrees to the jurisdiction of such court.

Signed:

Town of Lexington,
By its Board of Selectmen,

Artis Senior Living, LLC

By:
Title:

Date: _____

Date: _____